

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – FEBRUARY 9, 2005**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Grzan, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda. No comments were offered.

City Council Action

OTHER BUSINESS:

1. PLANNING COMMISSION INTERVIEWS/APPOINTMENT

City Clerk Torrez presented the staff report, informing the Council that applicant Mike Davenport contacted her to advise that his employer is sending him out of the area on a business trip. Therefore, he would be unavailable to interview this evening. She informed the Council that she advised Mr. Davenport that she would forward his regrets to the Council and that it would be up to the Council to make the determination whether it wishes to continue his interview date or proceed with appointments this evening. She further advised Mr. Davenport that should the Council decide to proceed with an appointment this evening, Mr. Davenport could be considered to fill three (3) upcoming vacancies on the Planning Commission scheduled to expire on June 1, 2005. She recommended that the Council proceed with interviews with Ms. Susan L. Koepp-Baker and Mr. Lee Schmidt.

The City Council proceeded to interview Ms. Koepp-Baker and Mr. Schmidt.

City Clerk Torrez inquired whether the Council wished to proceed with an appointment this evening or whether it would like to interview Mr. Davenport before making an appointment.

Action: *It was the consensus of the City Council to proceed with an appointment.*

Action: *Based on a ballot vote, the City Council **Appointed** Susan L. Koepp-Baker to fill one (1) unexpired term on the Planning Commission; term ending June 1, 2007.*

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-4 as follows:*

2. **BAY AREA UNITES – TSUNAMI FUNDRAISING EFFORTS – Resolution No. 5890**
Action: *1) **Adopted** Resolution No. 5890, Supporting and Commending “Bay Area Unites” – Tsunami Fundraising Efforts*
3. **SPECIAL CITY COUNCIL & SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JANUARY 14, 2005**
Action: ***Approved** the Minutes as Written.*
4. **SPECIAL CITY COUNCIL & SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JANUARY 15, 2005**
Action: ***Approved** the Minutes as Written.*

City Council Action

OTHER BUSINESS: (Continued)

5. **REPORT AND RECOMMENDATION REGARDING THE DRAFT FEBRUARY 2, 2005 CLEAN- UP AND ABATEMENT ORDER FOR THE OLIN SITE**

City Manager Tewes said that a draft clean-up and abatement order (CAO) is being issued by the Regional Water Quality Control Board (Board) with respect to perchlorate. He said that staff is bringing this item to the Council’s attention because of deadlines. He indicated that there is a deadline of February 25, 2005 for providing comments on the draft CAO. If a party wishes to request a hearing before the Board on the issuance of the CAO, they must be notified by February 11, 2005. He recommended that instead of seeking a separate public hearing that the City comment on the CAO. He informed the Council that he has received some notoriety in the press, and that this has gotten the attention of the City’s regulatory friends at the Board who wished that everyone would work closely together. He pointed out to the Board that the perchlorate plume extends both north and south of the Tennant site and that the City’s municipal wells have been impacted by perchlorate; noting that there are no other sources of perchlorate identified. Yet, the Board has issued an order that Olin Corporation should provide alternative water to everyone south of Tennant Avenue, but not to everyone north of Tennant Avenue. He said that it was his belief that Olin objected to the notion that they are responsible for perchlorate to the north. Because Olin has objected, he said that the Board has bifurcated the issue. He indicated that Olin is not objecting to the clean up south of Tennant Avenue. Therefore, the Board

will proceed with the draft CAO. However, Olin is objecting to their responsibilities north of Tennant Avenue. Therefore, this area is excluded from the CAO and that there is a separate process that is more evidentiary; leading to some science and analysis that might, in some point in the future, allow the Board to conclude that Olin is a discharger.

City Manager Tewes informed the Council that he has raised the issue in the press and in his conversations with the Board, that the City understands and does not wish to get in the way of the clean up and abatement order for the area south of Tennant. However, they should not expect the City to be satisfied with the pace in which things are going should the City have to go through a separate, analytical process that imposes a burden of proof on the regulator rather than on the discharger. He said that Olin was found to be the responsible party in October 2002 for everything south of Tennant Avenue. He indicated that a separate approach is not likely to occur until February 2006 or later, should Olin appeal. He said that it is staff's recommendation that the City prepare comments, indicating that he would be willing to share the comments with the Council and seek its approval before forwarding the comments. Should the Council instead wish to have an opportunity for the Board to hold a hearing on the CAO, the City needs to make the request by February 11.

Council Member Sellers thanked City Manager Tewes for taking an aggressive stand. He inquired why it is being recommended that the City not comment more widely. He inquired whether the City could be more aggressive without being divisive.

City Manager Tewes said that it was not his intent to be divisive. He noted that the City is a participant of the Perchlorate Working Group comprised of the Santa Clara Valley Water District, City of Gilroy, Santa Clara County and Morgan Hill. This group wants to work together toward a comprehensive approach. He said that the cities have as much concern about the rural areas and the agricultural wells. There is as much concern about the north as there is to the south of Tennant Avenue. He expressed concern that by bifurcating the issue, it would be easy for the Board to state that it has the northeast issue moving on a separate track. He recommended that the City comment on the draft CAO instead of asking for a hearing to have the CAO issued by the Board rather than the Executive Officer. He did not believe that it was in the City's interest to slow down the clean up order. He said that there are other avenues to discuss in closed session on how the City can bring these to the attention of the Board without specifically asking the Board to issue the CAO. He indicated that staff would return with comments for Council review.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **Endorsed** the City Manager's recommendation of sending City comments on the draft CAO.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

City Council Action

CLOSED SESSIONS:

City Manager Tewes announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority: Government Code Section 54957.6
Agency Negotiators: City Manager; Human Resources Director
Employee Organizations:
AFSCME Local 101
Morgan Hill Community Service Officers Association

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 7:02 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 9:19 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 9:20 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK